Office Supreme Court, U.S.
FILED
DEC 4 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

Office Supreme Court, U.S.
FILED
JAN 7 1963
JOHN F. DAVIS, CLERK

OCTOBER TERM, 1962

No. 445

SOUTHERN CALIFORNIA EDISON COMPANY, a corporation,

Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Appellee,

SOUTHERN CALIFORNIA GAS COMPANY and SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA,

Real Parties in Interest.

Supplement to Motion of Southern California Gas Company and Southern Counties Gas Company of California to Dismiss Appeal; or, Alternatively, Suggestion of Mootness.

HERMAN F. SELVIN,
523 West Sixth Street,
Los Angeles 14, California,

HARRY P. LEPPON, JR.,
JOSEPH R. RENSCH,
MILFORD SPRINGER,
720 West Eighth Street,
Los Angeles 17, California,

Attorneys for moving parties.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

PAGE

Supplement to motion of Southern California Gas Company and Southern Counties Gas Company of California to dismiss appeal; or, alternatively, suggestion of mootness..... 1

Appendix:

Document "1" .....App. p. 1

Document "2" .....App. p. 1

Document "3" .....App. p. 3

Joint notice of withdrawal of application.....App. p. 3

TABLE OF AUTHORITIES CITED

Cases	Page
Alton v. Alton, 347 U. S. 610	5
Amalgamated Association v. Wisconsin Emp. Rel. Bd., 340 U. S. 416, 418	4
Doremus v. Board of Education, 342 U. S. 429	4
Ford Motor Co. v. N.L.R.B., 305 U. S. 364, 372, 375	5
Heitmuller v. Stokes, 256 U. S. 359, 361-362	4
Kimball v. Kimball, 174 U. S. 158, 162-163	4
Royal Cadillac Service v. Interstate Commerce Com., 317 U. S. 595	5
St. Pierre v. United States, 319 U. S. 41, 42	5
Textile Workers Union v. Lincoln Mills, 353 U. S. 448, 459	4
United States v. Alaska S.S. Co., 253 U. S. 113	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962
No. 445

SOUTHERN CALIFORNIA EDISON COMPANY, a corporation,

Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Appellee.

SOUTHERN CALIFORNIA GAS COMPANY and SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA,

Real Parties in Interest.

Supplement to Motion of Southern California Gas Company and Southern Counties Gas Company of California to Dismiss Appeal; or, Alternatively, Suggestion of Mootness.

1. Southern California Gas Company and Southern Counties Gas Company of California, hereby move, as a supplement and addition to their motion to dismiss appeal heretofore filed, to dismiss the appeal herein on the ground that it has become and is, and the questions raised herein have become and are, moot.

2. It is the purpose of the moving parties by this supplemental motion to bring to the Court's attention facts that in the opinion and submission of the moving

parties render the within appeal moot and require its dismissal; or alternatively, that withdraw certain of the questions raised from the power of this Court to entertain or decide them.

3. The facts upon which this supplemental motion is based follow:

(a) The moving parties applied to the Public Utilities Commission of the State of California for a certificate that public convenience and necessity required the construction, operation and maintenance by them in California of a pipeline for the transportation of natural gas, *i.e.*, the so-called "Rock Springs Project." Proceedings upon that application resulted in an order granting the certificate applied for. Appellant herein appeals from a judgment of the Supreme Court of the State of California refusing to review, and thereby in legal effect affirming, that order of the Commission. [See the Motion to Dismiss, heretofore filed by the moving parties, pp. 4-8; 23 (para. *Second*).]

(b) Shortly before that order was issued, and after the hearings on the certificate-application of the moving parties had been completed before the Commission, appellant and California Gas Transmission Company filed with the Commission applications for a certificate that public convenience and necessity required the operation and maintenance by them of a pipeline for the transportation and distribution of natural gas, *i.e.*, the so-called "Pemex Project."[1] In the late stages of a

[1]These applications are numbered and referred to, respectively, as 42931 and 42932.

supplementary or compliance hearing on the Rock Springs application [see, the Motion to Dismiss heretofore filed by the moving parties, pp. 5-7] parties other than appellant moved that this application be consolidated, for a comparative hearing, with the by-then pending Pemex application. One of the questions raised in this appeal is whether it was a denial of appellant's constitutional right for the Commission to refuse so to consolidate the hearings on the Rock Springs and Pemex applications. [*Statement as to Jurisdiction*, pp. 9, 41-44.] Another question is whether by hearing the Rock Springs application separately from and before hearing the Pemex application the Commission unconstitutionally prejudged the latter application. [*Statement as to Jurisdiction*, pp. 39-41.]

(c) On November 23, 1962 appellant and California Gas Transmission Company notified the Commission that they intended to and would withdraw their applications for certification of the Pemex project.[2] Upon receipt of this notification the Commission gave notice to all parties to the application-proceeding (including the moving parties herein) that the then pending hearing on the Pemex applications had been taken off the calendar because the applications had been withdrawn.[3] On November 26, 1962 appellant and California Gas Transmission Co. filed with the Commission a formal

[2] A true and correct copy of this notification is printed as document "1" in the appendix to this motion.

[3] A true and correct copy of this notice is printed as document "2" in the appendix to this motion.

withdrawal of their applications.[4] As a consequence there is not now pending any application by appellant for certification of the Pemex Project and the proceedings heretofore brought for that purpose are now at an end.

4. The only relief that could conceivably be granted by this Court to appellant in respect of the questions mentioned in paragraph 3(b) above, would be a reversal of the judgment appealed from in circumstances and with an expression of opinion that would require consolidation, or other simultaneous hearing, of the Rock Springs and Pemex applications. Relief of that sort could not now be effectively given, because the Pemex application is no longer a reality and no hearings or decisions in respect of it need be or will be had or made by the Commission. No decision of this Court, therefore, "would protect any rights [appellant] may once have had. . . ." [*Doremus v. Board of Education*, 342 U.S. 429, 433.]

Thus, the subject-matter to which the questions relate has been withdrawn and there is nothing in that respect upon which the appeal may effectively operate. It follows that to the extent of those questions this appeal is moot. [*Kimball v. Kimball*, 174 U.S. 158, 162-163; See, also: *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 459; *Amalgamated Association v. Wisconsin Emp. Rel. Bd.*, 340 U. S. 416, 418; *Heitmuller v. Stokes*, 256 U.S. 359, 361-362; *Royal Cadil-*

[4] A true and correct copy of this withdrawal is printed as document "3" in the appendix to this motion.

lac Service v. Interstate Commerce Com., 317 U.S. 595; *Ford Motor Co. v. N.L.R.B.*, 305 U.S. 364, 372, 375; *Alton v. Alton*, 347 U.S. 610.] And, of course, this Court is "without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it. . . ." [*St. Pierre v. United States*, 319 U. S. 41, 42; *United States v. Alaska S. S. Co.*, 253 U.S. 113, 116.]

Dated: December 3, 1962.

Respectfully submitted,

HERMAN F. SELVIN,
HARRY P. LETTON, JR.,
JOSEPH R. RENSCH,
MILFORD SPRINGER,

/s/ By HERMAN F. SELVIN,
Attorneys for moving parties.

APPENDIX.

Document "1".

[On Western Union form addressed to R. J. Pajalich, Secretary, Public Utilities Commission, dated November 23, 1962.]

RE: APPLICATIONS 42931 and 42932. JOINT NOTICE OF WITHDRAWAL OF ABOVE APPLICATIONS OF SOUTHERN CALIFORNIA EDISON COMPANY AND CALIFORNIA GAS TRANSMISSION COMPANY WILL BE FILED IN YOUR LOS ANGELES OFFICE ON MONDAY, NOVEMBER 26. SUCH WITHDRAWAL IS NECESSITATED BECAUSE PROJECT IS NOW IN PROCESS OF REVISION WHICH IS SO SUBSTANTIAL AND FAR-REACHING IN NATURE THAT THERE IS NO PURPOSE IN CONTINUING THE PROCESSING OF SAID APPLICATIONS. TELEGRAPHIC COPIES OF THIS TELEGRAM ARE BEING SENT TO ALL PARTIES WHO HAVE BEEN ALLOTTED TIME FOR ORAL ARGUMENT NOW SCHEDULED FOR NOVEMBER 28 and 29.

Document "2".

Before the Public Utilities Commission of the State of California.

Application No. 42931

In the matter of the application of CALIFORNIA GAS TRANSMISSION COMPANY, a California corporation, for a certificate that the Present and Future Public Convenience and Necessity require or will require the construction and operation of a natural gas pipeline and related facilities from a point on the United

States-Mexico International Boundary near Mexicali, Mexico, to electric generating plants in the metropolitan area of Los Angeles, California, and for authority to issue and sell securities.

Application No. 42932

In the matter of the application of SOUTHERN CALIFORNIA EDISON COMPANY to participate in a new natural gas pipeline project to the extent set forth herein and in support of the proposal of California Gas Transmission Company.

NOTICE OF REMOVAL FROM CALENDAR

TO: ALL APPEARANCES.

YOU ARE HEREBY NOTIFIED that the Public Utilities Commission of the State of California has removed the above entitled matters including the scheduled Oral Arguments for November 28 and 29, 1962 from its calendar since said applications have been withdrawn.

BY ORDER OF THE PUBLIC UTILITIES COMMISSION.

Dated at San Francisco, this 23rd day of November, 1962.

R. J. Pajalich, Secretary
Public Utilities Commission
of the State of California

cc: Los Angeles (2)
nr

Document "3".

Before the Public Utilities Commission of the State of California.

Application No. 42931

In the Matter of the Application of California Gas Transmission Company, a California Corporation, for a Certificate of Public Convenience and Necessity, etc.

Application No. 42932

In the Matter of the Application of Southern California Edison Company to Participate in a New Pipeline Project, etc.

JOINT NOTICE OF WITHDRAWAL OF APPLICATION.

California Gas Transmission Company (CalGas) and Southern California Edison Company (Edison) hereby jointly file their Notice of Withdrawal of the above applications.

In Application No. 42931 CalGas is requesting a certificate that the present and future public convenience and necessity require or will require the construction and operation of a natural gas pipeline and related facilities from a point on the United States-Republic of Mexico international boundary near Mexicali, Mexico, to electric generating plants of Edison in the Metropolitan area of Los Angeles, California, and for authority to issue and sell securities. In Application No. 42932, Edison seeks authorization to participate in the above natural gas pipeline project to the extent set forth therein and in support of CalGas' proposal.

The project covered by these applications is now in the process of revision, which revisions are expected to be completed shortly. Such revisions include matters such as gas supply, route of the pipelines, facilities, and costs and contemplate possible service to the Department of Water and Power of the City of Los Angeles as well as to Edison. Since these revisions are of a substantial and far-reaching nature, there appears to be no purpose in continuing the processing of the above applications.

Accordingly, we respectfully withdraw the above-captioned applications.

Respectfully submitted,

[Names of other Counsel]

November 26, 1962.

CALIFORNIA GAS TRANSMISSION COMPANY,
By /s/ HARRY S. LITTMAN,
Its Attorney,

SOUTHERN CALIFORNIA EDISON COMPANY,
By /s/ WILLIAM E. MARX,
Its Attorney.

District of Columbia : ss

Harry S. Littman, being first duly sworn according to law, says that he is an attorney for California Gas Transmission Company; that he has read the foregoing Notice of Withdrawal of Application of said company and is familiar with the contents thereof; that he has executed the same for and on behalf of said company with full power and authority so to do; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

/s/ HARRY S. LITTMAN,

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia this 23rd day of November, 1962.

/s/ LOUISE H. PARMER,
Notary Public.

My Commission expires February 28, 1965.